



### **JURISDICTION AND VENUE**

4. Ace admits that this Court has jurisdiction over claims brought under 35 U.S.C. § 292(a) pursuant to 28 U.S.C. §§ 1331, 1355(a), and 1338(a) and denies the remaining allegations in paragraph 4 of the Complaint.

5. The allegations in paragraph 5 of the Complaint call for a legal conclusion to which no answer is required. To the extent an answer is required, Ace denies the allegations of paragraph 5 of the Complaint.

6. The allegations in paragraph 6 of the Complaint call for a legal conclusion to which no answer is required. To the extent an answer is required, Ace denies the allegations contained in paragraph 6 of the Complaint.

### **BACKGROUND**

7. Ace admits that United States Patent No. 2,810,148 (“the ’148 patent”) on its face purports to have been filed with the United States Patent and Trademark Office on March 30, 1954 and to have been issued on October 22, 1957. The document speaks for itself and Ace denies any allegations concerning its contents that are inconsistent therewith.

8. On information and belief, Ace admits that the ’148 patent expired on October 22, 1974.

9. Ace admits that it sells the privately-labeled Trimline Edger product to its affiliated stores for re-sale to consumers. Ace denies the remaining allegations of paragraph 9 of the Complaint.

10. Ace denies that the Trimline Edger itself is marked with U.S. Patent No. 2,810,148.

**FIRST CAUSE OF ACTION: FALSE MARKING**

11. Ace incorporates by reference its answers to paragraphs 1 to 10 of the Complaint as if restated fully herein.

12. Ace denies the allegations in paragraph 12 of the Complaint.

13. Ace denies the allegations in paragraph 13 of the Complaint.

**ADDITIONAL DEFENSES**

Further responding to the Complaint, Ace asserts the following defenses, without admitting any allegations of the Complaint not otherwise admitted and without assuming any burden when such burden would otherwise be on FLFMC.

**FIRST DEFENSE**

FLFMC does not have standing to bring this action.

**SECOND DEFENSE**

The Complaint fails to state a claim upon which relief can be granted and must be dismissed.

**THIRD DEFENSE**

FLFMC's claim is barred by the equitable doctrines of waiver, estoppel, and laches.

**FOURTH DEFENSE**

To the extent that FLFMC alleges that it is entitled to any damages under 35 U.S.C. § 292(a) stemming from actions that occurred more than five years prior to the date FLFMC commenced this action, the claim is barred by the statute of limitations.

**FIFTH DEFENSE**

Plaintiff's claims against Ace must fail because Ace did not mark upon, or affix to, or use in advertising, phrases referring to the '148 patent in connection with the privately-labeled Trimline Edger and, accordingly, is not a proper party to this action.

**SIXTH DEFENSE**

This action is not an "exceptional case" under 35 U.S.C. § 285 and FLFMC is not entitled to its reasonable costs and attorneys' fees.

**WHEREFORE**, defendant Ace Hardware Corporation respectfully requests that this Court find in its favor and against FLPMC, LLC and enter an order (i) dismissing plaintiff's Complaint with prejudice and (ii) granting such other and further relief as the Court deems necessary under the circumstances.

Dated: May 21, 2010

Respectfully submitted,

/s/ Matthew T. Logue

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